



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: February 23, 2005

REPORT NO. 05-043

ATTENTION: Honorable Mayor and City Council
Docket of March 1, 2005

SUBJECT: Wireless Communication Facilities

REFERENCE: Manager's Report No. 04-114 Revised

SUMMARY

Issues - 1) Should the City Council adopt the attached amendments to City Council Policies 600-43, 700-06 and 700-10 and revisions to San Diego Municipal Code Sections 141.0420 and 22.0901 as they relate to Wireless Communication Facilities?

Staff's Recommendation:

1. Acknowledge for the record that the amendments to the San Diego Municipal Code and the identified Council Policies are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA guidelines Section ; and 15061(b)(3); and
2. Adopt revised Council Policy 600-43 (Wireless Communication Facilities), which as modified will identify the Site Access Fee amount, incorporate the language pertaining to wireless facilities from Council Policy 700-06 and delete reference to Council Policy 700-06.
3. Adopt revised Council Policy 700-06 (Encroachment on City Property), which as modified will delete references to wireless communication facilities.
4. Adopt revised Council Policy 700-10 (Disposition of City Owned Real Property), which as modified will include language related to leasing public property and Site Access Fees for wireless communication facilities.

5. Adopt amended Section 141.0420 (Wireless Communication Facilities) of the San Diego Municipal Code, which as modified will provide incentives to the industry to maintain a 100-foot separation between antennas and sensitive land uses and will clarify exemption language for small antennas.
6. Adopt amended Section 22.0901 (Leases of Real Property) of the San Diego Municipal Code, which as modified will allow the City Manager to execute lease agreements for terms up to ten years or less for wireless communication facilities proposed on city property.

Community Planning Committee (CPC) Recommendation – On October 26, 2004, the CPC voted 16-1 on a motion to approve the Telecommunication Issues Committee (TIC) recommended resolutions to the issues identified at the City Council meeting of July 27, 2004 (Attachment 7).

Other Recommendations – On August 25, 2004, the Telecommunication Issues Committee 2 reconvened and proposed recommended resolutions to each of the seven issues identified at the July 27, 2004 City Council hearing. The vote to support each of the recommendations was unanimous (Attachment 8).

Environmental Review - The revised Council Policies and amended sections of the San Diego Municipal Code are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA guidelines Section 15061(b)(3).

Fiscal Impact - All costs associated with the processing of wireless communication facility applications are paid from a deposit account maintained by the applicant.

Code Enforcement Impact – None.

Housing Impact Statement - None

Water Quality Impact Statement - None

BACKGROUND

On July 27, 2004, the City Council voted to approve the proposed amended Council Policy 600-43 and various amendments to the San Diego Municipal Code pertaining to Wireless Communication Facilities. At the hearing, seven issues were identified by the public and the industry as needing further consideration. Staff was directed to reconvene the Telecommunication Issues Committee (TIC2) to address the issues and report back with a recommendation to the City Council within 120 days (Attachment 6).

The issues include:

1. Revisions to the city policy to allow traffic signals as an option for wireless facilities in the public right-of-way;

2. Consideration of a 100-200 foot separation from residential property lines;
3. Provision of incentives to stay away from residential uses;
4. Consideration of implementing individual comprehensive wireless plans for each community;
5. Consideration of fire stations as a residential use;
6. Re-evaluation of the site access fees; and
7. Re-evaluation of appraisal and leasing process.

On August 25, 2004, TIC2 met to discuss and resolve the seven issues. The Committee came to agreement on each issue and after voting, came to unanimous consensus on the recommended resolution for each issue (Attachment 8). TIC2 presented the issues and their recommendations to the Community Planner's Committee (CPC) on October 26, 2004 and a motion to support the recommendations was supported by a vote of 16-1 (Attachment 7).

Because the leasing issues concerned primarily the industry and READ, staff met with industry representatives to resolve these concerns and determined that the Council Policies and the ordinance dealing with wireless communication facilities and leasing of city property would require amendments in order to clarify and address the identified concerns.

DISCUSSION

Following is an explanation and analysis of each issue, the TIC2 recommendations, and the staff recommended policy amendments regarding leasing.

The Seven Issues

1. City policy on traffic signals as an option for public right-of-way installations

Due to safety and maintenance concerns, the City very recently had an internal policy to allow wireless communication facilities on traffic signals in situations where a street light was not available. Prompted by public concern, the City surveyed other metropolitan cities and conducted an engineering analysis to determine if there were criteria that could be developed that would protect the public and the City. The Transportation Department and the Engineering and Capital Projects Department developed a list of criteria that the industry would have to comply with in order to enable providers to place antennas on traffic signals (Attachment 9).

The City has revised the internal policy so that all vertical elements in the public right-of-way will be treated equally. Concern by a community member to include the language in the City Council Policy and perhaps identify traffic signals as a preference is not recommended by staff and is not endorsed by TIC2. All communities are different and what may be acceptable in one community may not be in another. These types of applications will continue to be reviewed on a case by case basis in accordance with departmental policy. No change is proposed in either the policy or the ordinance.

2. Evaluate a 100-200 foot separation between wireless facilities and residential property

TIC2 evaluated the concept of providing a separation between wireless facilities and residential properties and determined that the existing ordinance language could be revised to accommodate the idea. Originally, staff received input from the public to include a separation similar to the City's of Del Mar and Encinitas, both of which maintain 100-foot separations between sensitive land uses such as residential. Since precedence has been set within the County of San Diego with 100-foot separations, it would be difficult to impose a greater separation without appearing arbitrary relative to the land use rationale for such separations.

Instead of merely imposing a separation requirement that could be challenged as a disguise to regulate radio frequency, which is not allowed under the Telecommunication Act of 1996, TIC2 decided it would develop an incentive for the industry to utilize sites that are further away from residential properties. To do this, TIC2 decided to include an exception to the regulations that would allow a lower decision process level for wireless antennas located 100-feet or further from a residential use, a school use or a day care facility. An application for a facility where the antennas are at least 100-feet away from one of these uses would move to a lower decision process level. Section 141.0420 of the Land Development Code has been revised to incorporate regulations to address this issue (Attachment 4).

For example, the recently adopted regulations would require a Process Four Conditional Use Permit (Planning Commission decision, appealable to the City Council) for a wireless facility in a park site. However, if the park were large enough so that the antennas were proposed 100-feet or more from the nearest residential use property line, it would become a Process Two Neighborhood Use Permit (staff decision, appealable to the Planning Commission). Similarly, if a wireless facility was proposed on a property such as a church, which under the new regulations would require a Process Three Conditional Use Permit (Hearing Officer decision, appealable to the Planning Commission), it too would become a Process Two Neighborhood Use Permit if the property was large enough to accommodate a 100-foot separation between the antennas and the residential property line.

In terms of the public right-of-way, the above proposal by TIC for the 100-foot separation, would not apply. Under California Public Utilities Code section 7901, wireless providers have the right to use the public right-of-way for their facilities. However, under California Public Utilities Code section 7901.1 cities maintain the right to regulate the use of the public right-of-way as it relates to time, place and manner. In other words, the City can regulate when, where and how the facility is installed. The number one complaint from the public about right-of-way installations has to do with the potential health effects associated with the radio frequency (RF) emitted by the antennas. This is an issue that is out of the City's control, since the federal government regulates RF and has removed the responsibility from local government.

Another objection from the public is the visual impact. Street lights and traffic signals are existing visual impacts that are a part of the acceptable urban landscape. The addition of a maximum of three panel antennas to one of these vertical elements, tightly fitted to the pole and painted to match, would not significantly increase the visual impact. In this manner, the public would not generally perceive the negligible addition to the urban environment. Consider the two existing wireless facilities on North Torrey Pines Road (near UCSD) that are antennas mounted to the upper section of the traffic signals. In the eight years that the facilities have existed, only a handful of people knew the poles supported wireless antennas, primarily due to the fact that the appearance is not immediately obvious.

An impact that could be considered significant is the associated equipment. The majority of the equipment would be in a subterranean vault, except for the power and telco. SDG&E requires this to be above ground and it is typically located in a cabinet approximately four-feet high adjacent to the vault within the public right-of-way. The other above ground components are two 3-foot high vent pipes, which are also located near the vault and provide air flow for the equipment.

In newer neighborhoods where transmission lines are undergrounded, there are usually more options for locating equipment above ground in the right-of-way where there are collocation opportunities with existing cabinets. In older neighborhoods where the overhead lines have not been undergrounded, finding areas in the right-of-way to congregate equipment can sometimes be problematic. Extending the separation requirement to the public right-of-way would be challenging in that there are no residential areas where a provider would be able to maintain a minimum 100-foot separation, thereby requiring a higher decision process for all right-of-way projects adjacent to residential uses. In essence, this could be misconstrued as having the effect of prohibiting access to the right-of-way and more importantly, if it is determined that the antennas are not a visual impact, the industry could argue that it is a disguise for regulating RF, which is a violation of the Telecommunication Act of 1996.

3. Evaluate an adjusted review process for wireless facilities in park sites

Since parks come in all shapes and sizes, not all parks should be considered for a decision process level lower than a Process Four. Moreover, the TIC2 consensus recommendation on this issue has been addressed through the recommendation for a separation between wireless antennas and residential, school, and day care uses' property lines. Those parks that can accommodate facilities that comply with the 100-foot separation will be reduced to a Process Two decision level.

4. Encourage individual comprehensive community wireless siting plans

The TIC2 consensus recommendation is that this issue has been addressed by the preference categories and decision levels in the ordinance and policy already adopted by

the City Council and no revisions are necessary. Instituting a requirement for the industry to work with Community Planning Groups to develop siting plans could be legally problematic because the City does not require any other businesses to provide community siting plans.

With the dynamic nature of wireless networks, it is difficult for providers to accurately predict where new sites will be needed. Networks for the most part, are in place for each of the carriers, however, for new sites, planning at this stage is typically done over a period between 12-18 months and is more general in nature not site specific. Some of the factors that limit the preparation of detailed siting plans are:

- Customer needs – The majority of sites are identified through customer complaints
- Funding – Corporate funding to area markets fluctuates throughout the fiscal year
- New sites – The sensitive nature of technology means that each new site has the potential to change future plans for the network
- Proprietary information – Competition between carriers

Historically, the industry's attitude is that time is money so the easier it is to process a project, the more likely they are to pursue a location that does not generate much controversy. It has been staffs experience that the industry has always followed the path of least resistance.

The new regulations and policy have and will continue to evolve to respond to legal issues, community input, advancing technology and consumer demand. As always, Community Planning Groups will maintain the opportunity to review and make recommendations on discretionary applications. TIC2 recommended not endorsing a requirement for these plans; however, the committee believes individual communities that pursue this option should ensure that the plan conforms to the newly adopted regulations, City Council Policy, as well as, state and federal law. No revisions are recommended for the policy or the ordinance.

5. Consider reclassifying fire stations as a residential use

Fire stations are considered a public use and are not regulated by the Land Development Code. The TIC2 consensus recommendation is that fire stations should remain as a mixed use and be maintained as a Preference Two and decision level Process Two Neighborhood Use Permit (NUP). No revisions to the ordinance are recommended.

6. Evaluate where and how the site access fee is distributed

The TIC2 consensus recommendation is to leave the policy language as is, allocating the Site Access Fee into a special fund to benefit the impacted property. The controlling department should work with stakeholders to determine how to best use the funds (Attachment 3).

7. Consider revising leasing and appraisal process

The TIC2 consensus recommendation is to apply the standard of “fair market value” relative to lease prices throughout the City of San Diego. In response to the concerns identified at the City Council hearing, READ met individually with each of the major providers that had voiced concerns to discuss their issues. The providers’ primary concerns were a result of their lack of knowledge of the City’s appraisal process and their perceived lack of input into the process. As a result, the following changes have been implemented:

All providers will be given a sample of the telecommunications facility appraisal methodology used by a third-party MAI appraiser for the City. In addition, in order to enhance the market data used in the valuations, all providers will be encouraged to share market information on all their local sites, with the understanding that this information is proprietary.

The lease negotiation process was clarified, and the providers were informed of the City’s process for assigning rental rates to a given site (as established by the appraiser’s valuation). The providers were advised to communicate any questions they have concerning rental rates or the appraisal in writing to READ, including any supporting market data. READ would then discuss their concerns with the City’s appraiser and provide a written response. Where appropriate, a revised appraisal may be issued.

Due to the lengthened review process and increased upfront costs, a recurring theme among providers was the request for longer-term leases, specifically the ability for a ten-year lease term approval by the City Manager, as proposed for modification in Section 22.0901 of the San Diego Municipal Code (Attachment 5). Currently, Council approval is required for wireless communication facility leases with a term longer than three years. The adoption of the ordinance and the policy in July will provide the industry with guidelines for locating on city property and a recognized review process. For the public, the ordinance and policy now provide many opportunities for participation through added review measures. With these proposed revisions, the policy comprehensively addresses the leasing process and associated requirements. Council Policies 700-06, 700-10 and San Diego Municipal Code Section 22.0901 have been revised to accommodate these changes (Attachments 2, 3 and 5 respectively).

The previous City Manager Report (No. 04-114 Rev.) discussed subleases, identifying the percentage rent rate as a minimum of fifty percent of gross revenues from subleases for wireless communication facilities. Council Policy 700-10 has been modified to accommodate the addition of this language (Attachment 3).

Additional Revisions

As a matter of clarification, the exemption language in Section 141.0420, Wireless Communication Facilities, in the San Diego Municipal Code is being revised to clarify ambiguous language currently contained in the regulations. What could be misinterpreted as an exemption for more than one 24-inch diameter dish or 24-inch remote panel antenna has been revised to specify an individual antenna as singular rather than plural (Attachment 4). The effect of this change means that an applicant requesting to put one 24-inch diameter antenna or one remote panel antenna less than 24-inches wide or 24-inches long on a structure would continue to be able to do so as long as the antenna was not associated with any other wireless communication facility on the same property. However, if an applicant had more than one of these antennas described above on a structure, there would be no exemption and the zone would dictate the process. This revision should clear up any confusion.

With regard to Council Policy 700-06, Encroachments on City Property, revisions were made a few years ago to include guidelines and an evaluation procedure for wireless communication facilities (Attachment 2). Upon reconsideration, staff has determined that the language contained in Council Policy 700-06 would be better placed in Council Policy 600-43, Wireless Communication Facilities (Attachment 1). From a practical standpoint, maintaining all of the wireless communication procedures and guidelines in one document will eliminate contradictions and promote consistency and ultimately will be more valuable both to staff and the public.

Jennie Starr Proposal

A lot of discussion has taken place since the City Council hearing in July regarding these issues. Jennie Starr, a community activist, has been presenting her own proposed amendments to the Council Policy and Ordinance, and has been gaining support from various planning groups (Attachment 10). In addition to the issues Ms. Starr addressed to the City Council in July, she has added another issue regarding the applicability of the ordinance and policy to all wireless services. Her proposed resolutions are unlike those that TIC2 is proposing, mainly because they conflict with the land use rationale and legal counsel upon which TIC2's recommendations were based.

Careful consideration should be given to Ms. Starr's proposed resolution, however, it should be noted that after more than three years of involvement in the discussions, negotiations and writing of the documents, TIC2 believes that the proposed amendments, as written, should be adopted and the policy and ordinance monitored for its effectiveness over the ensuing year. In the meantime, if City Council decides to reconvene TIC2 or appoint new members, the group could work cooperatively to monitor the effectiveness, identify issues and propose recommendations for future resolution.

CONCLUSION

The proposed revisions to the ordinances and policies address most of the seven issues identified at the City Council hearing in July. The recommendations included in this report are a result of research, analysis and extensive TIC2 discussions. Extensive negotiation and compromise were required by TIC2 representatives and their process concluded with a consensus among committee

members. Issues that have been identified since the July City Council hearing have been noted and if the City Council desires, can be referred back to staff and the Telecommunication Issues Committee for further analysis and resolution.

ALTERNATIVES

1. Do not approve the revisions to Council Policies 600-43, 700-06 and 700-10 or the ordinance modifications.
2. Accept some, but not all of the Council Policy and ordinance changes.

Respectfully submitted,

Gary Halbert
Development Services Director

Approved: George I. Loveland
Assistant City Manager

HALBERT/KLA

Attachments:

1. Draft Council Policy 600-43 – Strikeout/Underline
2. Draft Council Policy 700-06 – Strikeout/Underline
3. Draft Council Policy 700-10 – Strikeout/Underline
4. Draft Ordinance Revisions Section 141.0420– Strikeout/Underline
5. Draft Ordinance Revisions Section 22.0901- Strikeout/Underline
6. City Council Minutes July 27, 2004
7. CPC Minutes October 26, 2004
8. TIC Recommendation August 25, 2004
9. Requirements for Antenna Attachment to City Assets
10. Jennie Starr Proposal